IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 4040 of 1994

SURAYBHAN SINGH
V/S
STATE & ORS.

Mr. NS ACHARYA for Mr. BL PUROHIT, for the appellant / petitioner

Mr. OP BOOB, A.G.A., for the respondent

Date of Order : 10.4.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

This petition has been filed by the petitioner, seeking to challenge the orders Annexure 1, 2 and 3. Vide Annexure-1 the re-opened ceiling proceedings were decided, and it was held, that 7.63 standard acres of land is liable to be resumed to the State.

The facts of the case are, that ceiling proceedings were initiated against the petitioner under Chapter III-B of the Rajasthan Tenancy Act, 1955, hereafter to be referred to as the Old Law, and determination was made vide order dt. 1.10.1971. Thereafter under Section 15 (2) of the Rajasthan Imposition of Ceiling Agricultural Holdings Act, 1973, hereafter to be referred to as the New

Act, those proceedings were re-opened, as the State Government was of the opinion, that some transfers had been wrongly recognised, while making determination under Old Law vide order dt. 1.10.79. Accordingly, the proceedings were commenced, notice was issued to the petitioner, who submitted his reply, submitted declaration in Form No. 4, and also produced evidence oral as well as documentary. The Form No. 4 submitted by the petitioner was sent to the Tehsildar for submitting report, and accordingly it was reported, that on 25.2.1958 the petitioner was holding 97.38 standard acres of land, and that land to the extent of 58.96 standard acres had been transferred by the petitioner after 9.12.1959, with respect to which transfers mutations had been effected. Then, in Form No. 4 the petitioner had also declared to have effected five more transfers, being in favour of Gheesulal, Sukha, Chandan Singh, Ladu and Ram Chander, to the extent of 8.21 standard acres of land. The learned Additional Collector recognised the transfers regarding 58.96 standard acres of land, with respect to which mutations had been effected, but regarding these five transfers, to be referred to as the transfers in question, it was held, that according to the report entry in the revenue record had not been effected, and regarding possession also no evidence was led by the petitioner to show that the transfer had been effected before 31.12.1969, and that, immediately after transfer the purchasers were delivered possession, and therefore, these transfers in

question were not recognised. Consequently, the order was passed directing resumption of 7.63 standard acres of land. Against this order an appeal was filed, which was dismissed by the learned Board of Revenue, and the review petition also met with the same fate.

The record of the learned courts below were requisitioned, and in response it was received also vide letter dt. 22.7.2000, and when the matter was taken up for hearing, it transpired that the record does not contain the report of the Tehsildar, so also some other material, therefore, the counsel for the State was directed to make available for perusal of the Court, the complete record. Then, on 2.4.2007 again the needful was not done, and therefore, the case was adjourned to 9.4.2007, and yesterday, the record was made available, and was shown to the Court, however, the matter was not taken up yesterday, and was taken up today.

I have perused the record, and find, that the report of the Tehsildar, which is dated 15.9.71 is there, and this report was submitted, in compliance of the order dt. 30.8.71, whereby the Form No. 4 was sent to Tehsildar, with a direction to submit the report. In this From No. 4 these transfers have been shown to have been effected before 31.12.1969, and the Tehsildar has reported, that all these transfers are duly recorded on the stamps, and the

purchasers are in possession since before 31.12.1969, and out of these five, transfer in favour of Ram Chander is by registered document as well. Thus, this report does clearly reports the transfers to be of the time anterior to 31.12.1969, and also reports the transferees to be in possession since 31.12.1969. Then I also find on record, that the copies of the five sale deeds have also been produced on record, which all show, that they were affected prior to 31.12.1969. During course of arguments, one argument was raised by the learned counsel for the State, that there is nothing to show that the transferees are agriculturalists, or that they were not holding land beyond ceiling limits. In this regard also, it may be observed, that firstly this was not the ground given by the learned Addl. Collector, not to recognise these transfers in question. However I find, that affidavits of all the transferees are there on record, deposing that they are in cultivatory possession of the land since the time of purchase, and are actually cultivating also. Not only this they have also deposed to have developed the land, and that each of the deponent is a resident of Rajasthan, and is bonafide agriculturist. None of these deponents have been cross-examined on their affidavits, and no evidence has been led on the side of the Department to rebut this evidence or to show that these or any of these persons were already holding land in excess of ceiling limit.

Thus, what transpires is, that the authorities below passing the orders Annexures-1, 2 and 3 do not appear to have correctly read the Tehsildar's report, so also appear to have not considered the other material available on record, being the sale deeds, and the affidavits of the purchasers. That vitiates the impugned judgments. Obviously, therefore, the impugned judgments are liable to be set aside, and since the transfers are clearly established to have been effected prior to 31.12.1969, in favour of bonafide agriculturists, and resident of Rajasthan, and for agricultural purpose as the transferees are cultivating the land since the time of purchase, the transfers are required to be recognised.

Consequently, the writ petition is allowed. Annexures 1, Annexure-2 and Annexure-3 are set aside, and five transfers in question are directed to be recognised. Obviously, if they are recognised, even according to the calculations made in Annexure-1, no land can be said to be in excess of the ceiling limit, with the petitioner, and therefore, nothing is required to be resumed. The parties shall bear their own costs of this writ petition.

(N P GUPTA),J.

/Sushil/